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FISCAL IMPACT STATEMENT

LS 6788

BILL NUMBER: SB 397

NOTE PREPARED: Dec 28, 2011

BILL AMENDED:

SUBJECT: Use Tax Collection on Remote Sales.

FIRST AUTHOR: Sen. Mishler

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill provides that for purposes of the Indiana Sales and Use Tax law, a "retail merchant engaged in business in Indiana" includes any retail merchant who:

- (1) makes retail transactions in which a person acquires personal property or taxable services for use, storage, or consumption in Indiana; and
- (2) enters into an arrangement with any person, other than a common carrier, to facilitate the retail merchant's delivery of property to customers in Indiana by allowing customers to pick up property sold by the retail merchant at a place of business maintained by the person in Indiana.

It specifies that a retail merchant may not be required to collect and remit Sales or Use Taxes unless:

- (1) the retail merchant has a physical presence in Indiana; or
- (2) the activities conducted in Indiana on behalf of the retail merchant are significantly associated with the retail merchant's ability to establish and maintain a market in Indiana.

The bill provides that a retail merchant is presumed to be engaged in business in Indiana if an affiliate of the retail merchant has substantial nexus in Indiana and certain additional conditions are satisfied. It provides that a retail merchant is presumed to be engaged in business in Indiana if the retail merchant enters into an agreement with one or more residents of Indiana under which the resident directly or indirectly refers potential customers to the retail merchant, if the cumulative gross receipts from the sales by the retail merchant to customers in Indiana who are referred to the retail merchant by all residents is greater than \$10,000 during the preceding 12 months. The bill specifies that the presumptions may be rebutted.

It provides that these changes regarding remote sellers take effect January 1, 2013. The bill provides that a person's unpaid Use Tax liability that was due and payable for tangible personal property acquired before January 1, 2012, is forgiven.

Effective Date: Upon passage; January 1, 2013.

Explanation of State Expenditures: *Department of State Revenue (DOR):* This bill will result in an increase in administrative costs for the DOR by requiring the DOR to revise Sales Tax forms to incorporate the provisions of this bill. The DOR reports that the existing level of resources is sufficient to implement this provision.

State Budget Agency (SBA): This bill provides that by the 15th day of each month, the SBA shall determine whether the state is requiring sellers not located in Indiana to collect the Use Tax under a law enacted by the United States Congress. It requires the SBA to certify this fact to the Budget Committee. The SBA's existing level of resources should be sufficient.

Explanation of State Revenues: *Impact on Sales Tax Revenue:* This bill expands the definition of who qualifies as a "retail merchant". The definition expansion is effective January 1, 2013. However, the bill provides that the definition change does not apply after the SBA certifies that the state is requiring sellers not located in Indiana to collect Use Tax on remote sales of tangible personal property under a law enacted by the United States Congress.

The new definition would require certain electronic commerce (e-commerce) entities to remit Sales Tax. This provision would increase Sales Tax revenue by an indeterminable amount. The amount of the increase would depend on the extent to which the definition change influences the location decision of a business entity.

Unpaid Use Tax Liability: This bill provides that a person's unpaid Use Tax liability that was due and payable for tangible personal property acquired before January 1, 2012, from a seller that did not collect Use Tax is forgiven if, before January 1, 2012:

- (1) the DOR has not issued to the person:
 - (A) a Use Tax assessment and demand for payment under IC 6-8.1-5-3; or
 - (B) a demand notice for payment of Use Tax under IC 6-8.1-8-2; or
- (2) the person has not filed a return or an amended return reporting a liability for the Use Tax.

Current statute requires that an individual pay Use Tax on online transactions on the individual's income tax return. In FY 2011, approximately \$1.77 M was collected in Use Tax on the tax year 2010 individual income tax returns.

Background Information: The Main Street Fairness Act (HR 2701) was introduced in the U.S. House of Representatives on July 29, 2011, and was referred to the House Committee on the Judiciary. The Main Street Fairness Act which would allow states, provided they have met certain conditions to require Internet and mail order retailers to collect sales tax. The legislation would allow any state that has adopted the Streamlined Sales and Use Tax Agreement to collect sales and use taxes from remote sellers. There are currently 24 member states in compliance with the Streamlined Sales and Use Tax Agreement, including Indiana.

A study conducted by the Indiana Fiscal Policy Institute and the Ball State University Center for Business and Economic Research examined how much revenue Indiana will lose in 2012 as a result of the absence of a tax on e-commerce transactions. The estimated revenue loss ranged from \$39.6 M to \$114.3 M. Additionally, the study examined the effect of a tax on e-commerce transactions on an e-commerce entity's

location decision and found no statistically significant relationship. A University of Tennessee study estimated e-commerce-related annual Sales Tax losses in Indiana at \$216.9 M for FY 2012.

Sales Tax revenue is deposited in the state General Fund (99.848%) the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%)

Explanation of Local Expenditures:

Explanation of Local Revenues: Local revenues will be impacted to the extent that a local unit receives funds from the Commuter Rail Service Fund or the Industrial Rail Service Fund.

State Agencies Affected: DOR.

Local Agencies Affected:

Information Sources: *To Collect Sales Tax or Not: Indiana's Ecommerce Conundrum - Determining the State's Lost Sales Tax Revenue and Weighing the Amazon Tax Policy.* Indiana Fiscal Policy Institute, November 2011. Streamlined Sales Tax Governing Board, <http://www.streamlinedsalestax.org/>; H.R. 2701 Bill Text, S.1452 bill Text, Library of Congress; Tom Conley, DOR, 317-232-8039.

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